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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT E. COYLE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 36A05-0606-CR-294
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE JACKSON CIRCUIT COURT
The Honorable William E. Vance, Judge
Cause No. 36C01-0410-FA-46

APRIL 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Robert E. Coyle appeals his convictions of and sentences for one count of conspiracy to commit arson, a Class B felony, Ind. Code §§ 35-43-1-1, 35-41-5-2, and three counts of conspiracy to commit murder, Class A felonies, Ind. Code §§ 35-42-1-1, 35-41-5-2.

We affirm in part and reverse and remand in part.

Coyle presents two issues for our review, which we restate as:

- I. Whether there was sufficient evidence to support Coyle's convictions.
- II. Whether the trial court erred in sentencing Coyle.

The facts most favorable to the verdict follow. In 2004, Coyle was living in a residence in Seymour, Indiana with his girlfriend. In August of that year, the Seymour police, led by Detective Carl Lamb, executed a search warrant on the residence. Based upon the officers' findings, Coyle and others were arrested for dealing cocaine. Coyle was imprisoned at the Jackson County jail where he told Ryan Tincher, another inmate, of his desire to kill Detective Lamb and his family. Once he was released from jail, Tincher told Detective Lamb about Coyle's statements. Coyle had previously shared his aspiration to kill Detective Lamb with Melvin Robison, an acquaintance, and, while Coyle was incarcerated at the Jackson County jail, Robison became an inmate there, as well. While an inmate, Robison acted as a confidential informant to obtain information on Coyle's plan to kill Detective Lamb and his family. A police officer from a neighboring community posed as Robison's contact "on the outside," and Coyle eventually signed over two vehicles as payment for the murders and for the burning of Detective Lamb's home. Based upon the information gathered while Coyle was

incarcerated, he was charged with three counts of conspiracy to commit murder and one count of conspiracy to commit arson. A jury found Coyle guilty on all four counts, and the trial court sentenced him to 45 years on each of the three counts of conspiracy to commit murder, to be served concurrently, and 15 years for his conviction of conspiracy to commit arson, to be served consecutively to the 45 years. It is from these convictions and sentences that Coyle now appeals.

Coyle first contends that the State failed to present evidence sufficient to sustain his convictions. Specifically, he argues that Robison's testimony was incredibly dubious and that the testimony of the State's witnesses was not credible.

Our standard of review with regard to sufficiency claims is well settled. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). If there is substantial evidence of probative value from which a trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id.* Moreover, we are mindful that the trier of fact is entitled to determine which version of the incident to credit. *Barton v. State*, 490 N.E.2d 317, 318 (Ind. 1986), *reh'g denied*.

The incredible dubiousity rule applies "where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt." *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2002). This Court has observed that application of this doctrine is rare, but, when used, the applicable standard is whether the testimony is so incredibly dubious

or inherently improbable that no reasonable person could believe it. *Krumm v. State*, 793 N.E.2d 1170, 1177 (Ind. Ct. App. 2003).

Coyle asserts three reasons that Robison's testimony was incredibly dubious. First, Robison gave three versions of his agreement with Coyle. Second, Robison's testimony was coerced by police officers. Third, Coyle notes that Robison's testimony is uncorroborated.

First, Coyle states that Robison initially testified that his agreement with Coyle was to kill Detective Lamb and his family. He argues that because Robison later stated that the plan also included burning the Lamb home and killing the confidential informant in Coyle's case, Robison's testimony is incredibly dubious. However, this is not the case. Rather than contradicting his earlier testimony, Robison was merely expanding upon the details of Coyle's plan. He responded to questions concerning, first, the murders of Detective Lamb and his family, and, second, to the burning of their home. Later questions concerned the murder of the confidential informant used in Coyle's drug case. Our review of the transcript reveals that Robison unequivocally testified that the agreement was for the murders of Detective Lamb and his family, the burning of the Lamb residence, and the murder of the confidential informant. *Compare Sisson v. State*, 710 N.E.2d 203 (Ind. Ct. App. 1999), *trans. denied* (witness' testimony was found to be incredibly dubious when on direct examination witness testified regarding defendant's involvement in burglaries and then recanted testimony on cross-examination).

Next, Coyle claims that Robison's testimony is incredibly dubious because it was coerced by police officers. Coyle suggests that the police officers coerced Robison into

coming up with information regarding Coyle's conspiracy to murder Detective Lamb and his family in order to help his own situation. Our review of the transcript reveals no evidence of such. The officers Mirandized Robison following his arrest, and he agreed to speak with them. At trial, Robison and the officers all testified that they had discussed Robison's criminal problems and that the officers had reassured Robison they would relay to the prosecutor that he had provided assistance to them. However, both Robison and the officers acknowledged that the officers could not guarantee leniency for Robison and that the officers did not make plea agreements. In addition, on cross-examination, Robison was asked why, if he was not expecting anything in return and nothing was promised to him, he would cooperate with the police in the manner that he did. Robison responded, "[a]ny normal human being would, in my opinion." Tr. at 134. Defense counsel further cross-examined Robison, as well as the officers involved, questioning their credibility and what offers of leniency, if any, had been extended to Robison in exchange for his cooperation. It is the function of the trier of fact to determine the weight of the evidence and the credibility of the witnesses, *K.D. v. State*, 754 N.E.2d 36, 39 (Ind. Ct. App. 2001), and we will not disturb the jury's decision in the present case.

Finally, Coyle avers that Robison's testimony is uncorroborated, and therefore incredibly dubious, because no one but Robison spoke with Coyle regarding their agreement to commit the murders and the arson. The uncorroborated testimony of a single witness is sufficient to sustain a conviction on appeal. *Seketa v. State*, 817 N.E.2d 690, 696 (Ind. Ct. App. 2004). Coyle's argument is nothing more than an invitation for

this Court to re-evaluate witness credibility. The jury heard the testimony and made its credibility determinations, which we will not disturb. *See Newman*, 677 N.E.2d at 593.

Coyle also maintains that the State's evidence is insufficient to sustain his convictions because the testimony of the State's witnesses is not credible. He specifically refers to the testimony of Ryan Tincher and the police officers involved in the case.

Coyle's assertions on this issue are an unmistakable invitation to assess witness credibility. Coyle cited in his brief, and we have set forth in this opinion, our standard of review which clearly states our lack of authority to evaluate the credibility of witnesses. *See Newman*, 677 N.E.2d at 593. Here, the jury observed first-hand the testimony of Tincher and the officers, as well as their cross-examination by defense counsel. Armed with that information, the jury made its determination. In making its decision, the jury considers all the evidence, including any inconsistencies, before it comes to a conclusion. In doing so, it decides which version of the situation to accept. *See Barton*, 490 N.E.2d at 318. We respect and will not impinge upon the jury's exclusive province to weigh conflicting evidence. *See Collier v. State*, 846 N.E.2d 340, 344 (Ind. Ct. App. 2006), *trans. denied*, 860 N.E.2d 585. Therefore, we cannot and will not accept Coyle's invitation to disturb the jury's decision.

For his second assertion of error, Coyle claims that the trial court erred in sentencing him. Particularly, he alleges that his sentence is in violation of Ind. Code § 35-50-1-2(c).

Sentencing is a determination within the sound discretion of the trial court, and we will not reverse the trial court's decision absent an abuse of discretion. *Allen v. State*,

722 N.E.2d 1246, 1250 (Ind. Ct. App. 2000). Although the trial court is given broad discretion in determining sentences, the sentences it sets must be within statutorily prescribed parameters. *Puckett v. State*, 843 N.E.2d 959, 962 (Ind. Ct. App. 2006). Therefore, if a sentence violates these statutory parameters, this Court is required to correct it. *Id.*

Ind. Code § 35-50-1-2(c) provides, in pertinent part:

The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an *episode of criminal conduct* shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(Emphasis added). In the present case, Coyle was sentenced to fifteen (15) years for his conviction of one count of conspiracy to commit arson, a Class B felony. This term was to be served consecutively to concurrent terms of forty-five (45) years on each of three counts of conspiracy to commit murder, Class A felonies, for an aggregate sentence of sixty (60) years. Coyle contends that because his offenses constitute a single episode of criminal conduct, his sentence could not exceed fifty-five (55) years, the advisory sentence for murder, which is the felony that is one class of felony higher than the highest felony for which Coyle was convicted. *See* Ind. Code § 35-50-2-3.

Neither party claims that the instant offenses were "crimes of violence" as mentioned in Ind. Code § 35-50-1-2(c). Thus, the sole issue is whether the crimes of

which Coyle was found guilty constitute a single episode of criminal conduct. An “episode of criminal conduct” is defined by statute as “offenses or a connected series of offenses that are closely related in time, place, and circumstance.” Ind. Code § 35-50-1-2(b). We have defined an episode as “an occurrence or connected series of occurrences and developments that may be viewed as distinctive and apart although part of a larger or more comprehensive series.” *Johnican v. State*, 804 N.E.2d 211, 217 (Ind. Ct. App. 2004). In addition, we have recognized that the singleness of a criminal episode should be based on whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to details of the other charge. *Id.*

All of Coyle’s convictions arose from the same agreement between Coyle and Robison for the murders of Detective Lamb, his wife and his child, and for the burning of their home. Robison testified that, in exchange for the three murders and the arson of the Lamb home, Coyle gave Robison and the undercover officer two vehicles allegedly owned by Coyle and forgave Robison’s debt. The agreement included all three murders, as well as the arson, and all four offenses were discussed and considered together. We therefore conclude that the actions underlying Coyle’s convictions were one episode of criminal conduct. We find the State’s argument to the contrary unavailing.

Thus, having determined that Coyle’s convictions constitute a single episode of criminal conduct, we find that his sixty (60) year sentence is in violation of express statutory authority. *See* Ind. Code § 35-50-1-2(c). Coyle’s aggregate sentence cannot exceed fifty-five (55) years, the advisory sentence for murder, which is the next highest

level of felony than the most serious felony for which Coyle was convicted. *See* Ind. Code §§ 35-50-2-3 and 35-50-1-2(c). Upon remand, the trial court is instructed to reduce Coyle's aggregate sentence to no more than fifty-five (55) years.

Based upon the foregoing discussion and authorities, we conclude that the State presented evidence sufficient to sustain Coyle's convictions. Further, Coyle's aggregate sentence violates statutory authority and must be revised.

Affirmed in part and reversed and remanded in part with instructions to reduce Coyle's sentence to no more than fifty-five (55) years.

RILEY, J., and FRIEDLANDER, J., concur.